

The defendant Union of India has preferred this appeal under Section 22 of the Railway Claims Tribunals Act, 1987 being aggrieved by the order dated 11.03.1991 made by the Railway Claims Tribunal, Jaipur Bench (hereinafter referred to as 'the Tribunal') whereby the application (transferred suit) filed by the respondent seeking compensation for non-delivery of goods has been allowed and the plaintiff-respondent has

been held entitled to recover an amount of Rs. 14,311.26 from the appellant.

By way of the suit filed in the Court of District Judge, Churu the plaintiff sought a decree against the present appellant with the submissions that the consignment booked by him on 07.02.1984 under Parcel Way Bill No. 046600 from Sujangarh railway station for delivery at Jawai Bandh railway station consisting of 3 bales of hosiery goods weighing 70 Kg has not reached the destination station nor delivered to the consignee; and the railway administration has failed to respond to the notice served by the plaintiff. The plaintiff stated the details of the hosiery items said to have been consigned and their value as stated in his bills Nos. 1235, 1236, 1237, and 1238.

The suit was put to contest by the defendant-appellant, inter alia, on the submissions that the plaintiff has sent the goods comprised only under bills numbers 1237 and 1238; that the plaintiff had stated wrong destination mark 'JWD' in place of the correct mark 'JWB' for Jawai Bandh railway station on the forwarding note; that there was no railway station with the mark 'JWD' and hence the goods reached Jawad Road railway station carrying the mark 'JWO'; that Jawad Road station sent the goods to the Jaipur Lost Property Office ('LPO' for short) who in turn issued notice to the plaintiff

on 26.12.1984 and upon the plaintiff failing to respond to the notice auctioned the goods on 29.01.1985 for Rs. 3032/-; that the inventory prepared by the LPO found only the goods of the bills numbers 1237 and 1238 containing 519 pieces of hosiery articles weighing 65 kilograms.

Then, the defendant-present appellant filed application under Order 6 Rule 17 CPC and by way of amendment pleaded further that in the enquiry got conducted by the railway administration it was revealed that the goods under bill number 1235 were hand delivered to the purchaser M/s Ashok Kumar Ratan Chand, Sheoganj who made payment of Rs. 1,500/- by way of draft and Rs. 500/- cash against the said bill; and hence the allegation of the plaintiff of having booked the goods under said bill No. 1235 with the consignment in question was false and rather fraudulent.

By way of applications under Order 11 Rule 14 CPC and Order 11 Rule 1 CPC the defendant sought production of the original of notices said to have been served upon the plaintiff under Section 55, 56 of the Indian Railways Act and the accounts books of the plaintiff particularly in relation to the said transaction related with bill number 1235; and served interrogatories in relation to the same transaction. The plaintiff did produce a copy of his cash book dated 28.01.1984 and a copy of ledger account of the said purchaser; and stated by

way of affidavit dated 15.10.1987 that the alleged notices were never received by him. The plaintiff also pointing out that no payment was received from the said firm on 29.01.1984 that was Sunday; and the payment received on 28.01.1984 was not towards bill No. 1235.

The matter then remained pending until 01.02.1990 for filing of documents and framing of issues; and then the suit was transferred to the Tribunal under the Act of 1987. The Tribunal framed the following issues on 18.09.1990:-

- "1. Whether the applicant is entitled to sue?
2. (a) Whether the suit consignment consisted of Hoisery goods of Bill No.1235, 1236 dated 28/1/84 and Bill No.1237, 1238 dated 6/02/84?
2. (b) Whether the suit consignment consists of Hoisery goods only of the Bill No.1237 & 1238 dated 6/2/84 and the goods of bill No.1235 & 1236 dated 28/1/84 were not booked at all?
3. Whether the applicant has suffered a loss of Rs.12671.26 P and he is entitled to get it?
4. Whether the applicant is entitled to get interest? If so, at what rate?
5. Whether the applicant has committed a fraud in booking of the goods as mentioned in para 12 & 12 (a) of the written statement?
6. Whether notice under Section 55 and 56 of the Indian Railways Act has been given to the applicant and the applicant has not given reply and the goods in consignment were sold at Jaipur Lost Property Office at Rs.2915/- plus sales tax?

7. Whether the goods of bill Nos.1235 and 1236 come within the excepted articles under Section 77(B) of the Indian Railways Act, if so, what is its effect?

8. Whether valid notice under Section 80 CPC has been given by the applicant?

9. Relief?"

The plaintiff submitted his evidence on 08.01.1991 and the case was posted for defendant's evidence on 11.03.1991. However, upon the defendant-appellant seeking time to produce evidence, the Tribunal declined to grant time and proceeded to decide the relevant issues in favour of the plaintiff and against the defendant and allowed the application.

In this appeal, the appellant has urged on the grievance that the Tribunal has proceeded in disregard of the principles of natural justice and the appellant has been denied fair opportunity of placing its oral and documentary evidence on record. In the context of the present case, the submissions do not carry enough substance.

It is noticed that in the suit filed by the plaintiff-respondent in the court of District Judge, Churu on 28.07.1984, written statement was filed on 19.09.1985 wherein the defendant took elaborate pleadings as noticed hereinbefore. The defendant filed the amended written

statement on 15.10.1987 and till 01.02.1990 the case was adjourned simply for the purpose of filing of documents and for framing of issues before it was transferred to the Tribunal.

Even the Tribunal framed issues only on 18.09.1990 and the plaintiff led his evidence on 08.01.1991. The defendant-appellant was granted time of over two months to file their evidence and the matter was fixed on 11.03.1991. It is of course true that on this very date of 11.03.1991 the Tribunal proceeded to deny further opportunity to the defendant-appellant and disposed of the matter by the impugned order; but having regard to the circumstances of the case, the procedure so adopted by the Tribunal cannot be said to be in denial of fair opportunity to the appellant. There is no reason worth the name available on record as to why the appellant choose not to file even the fundamental documents that were the very basis of their plea in written statement; and all of them were in their power and possession only. In fact, the elaborate plea related with the documents like the forwarding note, the alleged notice sent by LPO, the auction proceeding etc. all directly pertain to the contents of documents themselves; and if the pleas in written statement were taken on the basis of material available on their record, there is no reason why the same was not filed by the defendant along with the written statement itself. Even after filing of their amended written

statement, the suit proceedings were adjourned for more than two years for filing of the documents. Yet further, the Tribunal framed the issues nearly seven months after the matter was transferred to it. It does not appear justified on the part of the appellant Union of India to contend that proper opportunity of presenting its case was not extended. Had the appellant chosen to file the fundamental documents related with their defence plea within reasonable time and the case was decided merely for want of affidavit in evidence, may be the grievance sought to be raised in this appeal would have carried some elements worth consideration; but the appellant Union of India having omitted to file even the very basic documents related with a Claims Case for over 3½ years since after filing written statement does not appear justified to suggest that the Tribunal ought to have granted time only at askance. The Tribunal has not committed any illegality in the present matter in refusing adjournment and deciding the matter on merits.

Even on merits, the appellants have no case. The burden of submissions of the appellant has been that the plaintiff himself stated the mark of destination station on the forwarding note as 'JWD' although for the destination Jawai Bandh it ought to have been 'JWB'. The carbon copy of the concerned Parcel Way Bill No. 046600 produced by the plaintiff carries the particulars of destination station in clean

legible letters in devnagari script thus: "जवाई बांध"; and the route has also been stated as "via MJ" and chargeable distance as "442" (obviously it refers to kilometers). It is of course noticed that on the top of this Way bill a description has been stated as "SUJH-JWD" but in the first place such Way Bill has been prepared by the staff of the appellants only and it carries the signatures of the Station Master; secondly, and significantly, when according to the defendant there exists no station calling to the initials of JWD, it has not been explained as to how the consignment reached Jawad Road carrying the initials of JWO? If at all the plaintiff had made the marks JWD as alleged; and such marks do not refer to any railway station, it remains inexplicable as to how the railway administration choose to sent the goods to Jawad Road? It is not the case of the defendant that the plaintiff made the mark JWO. It appears that in a careless manner the consignment was sent to Jawad Road by the staff of the appellants and then the goods were disposed of by the LPO at Jaipur without proper intimation to the appellant.

Having examined the record of the case, this court is satisfied that based on material available on record, the view taken by the Tribunal remains justified; and there appears no reason or justification to consider granting of another opportunity to the appellants to elongate the life of this

litigation commenced in the year 1984. As noticed above, even the basic case set up by the appellant in the written statement remains shaky and rather implausible.

The appeal fails and is, therefore, dismissed. No costs

(DINESH MAHESHWARI),J.

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